

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVEANTE DESHAWN SMOOT,

Petitioner,

v.

CASE NO. 2:20-CV-3703

CRIM. NO. 2:19-CR-00020

JUDGE SARAH D. MORRISON

Magistrate Judge Elizabeth P. Deavers

UNITED STATES OF AMERICA,

Respondent.

ORDER

On September 15, 2020, the Magistrate Judge issued an Order and Report and Recommendation recommending that the Motion to Vacate under 28 U.S.C. § 2255 (ECF Nos. 103, 108, 117) be dismissed and denying Petitioner's motions to appoint counsel (ECF Nos. 106, 112) and Motion to Release [Due] to COVID-19 and Bias and Racism (ECF No. 105.) Petitioner has filed what has been docketed as a Motion for Reconsideration, which the Court construes as an Objection to the Order and Report and Recommendation. (ECF No. 122.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons already addressed in the Magistrate Judge's Order and Report and Recommendation, the record reflects no basis for relief. Petitioner's Objection (ECF No. 122) is **OVERRULED**.

The Order and Report and Recommendation (ECF No. 119) is **ADOPTED** and **AFFIRMED**. The Motion to Vacate under 28 U.S.C. § 2255 (ECF Nos. 103, 108, 117) is **DISMISSED**. Petitioner's motions to appoint counsel (ECF Nos. 106, 112) and Motion to Release [Due] to COVID-19 and Bias and Racism (ECF No. 105) are **DENIED**.

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, the Court now considers whether to issue a certificate of appealability. *Welch v. United States*, 136 S. Ct. 1257,

1263 (2016) (“Under the Antiterrorism and Effective Death Penalty Act of 1996, there can be no appeal from a final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability.”) (citing 28 U.S.C. § 2253(c)(1)).

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)).

This Court is persuaded that reasonable jurists would not debate the dismissal of Petitioner’s claims. The Court therefore **DECLINES** to issue a certificate of appealability.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that a request to proceed *in forma pauperis* on appeal should be denied.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE